

§ 792.101

792.202 HA retention of proceeds.
792.203 Application of amounts recovered.
792.204 Recordkeeping and reporting.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 59 FR 9409, Feb. 28, 1994, unless otherwise noted.

Subpart A—General Provisions

§ 792.101 Purpose.

The purpose of this part is to encourage public housing agencies and Indian housing authorities (HAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the section 8 housing assistance payments programs.

§ 792.102 Applicability.

(a) This part applies to an HA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the HA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the HA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of an HA administrative grievance procedure pursuant to, or incorporating the requirements of, § 882.216 or 887.405. This part does not apply to cases of owner fraud in HA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the HA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a criminal proceeding obtained on or after October 8, 1986, and to all tenant and owner fraud recoveries obtained through administrative repayment agreements signed on or after October 28, 1992.

24 CFR Ch. VII (4–1–99 Edition)

§ 792.103 Definitions.

Fraud and abuse. Fraud and abuse means a single act or pattern of actions:

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

HA (Housing Agency) is the collective term for Public Housing Agencies and Indian Housing Authorities. The terms *Public Housing Agency (PHA)* and *Indian Housing Authority (IHA)* are defined in 24 CFR part 5.

Judgment. Judgment means a provision for recovery of section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a HA to recover section 8 program funds obtained as a result of fraud and abuse.

Principal party in initiating or sustaining an action to recover. Principal party in initiating or sustaining an action to recover means the party that incurs more than half the costs incurred in:

(1) Recertifying tenants who fraudulently obtained section 8 rental assistance;

(2) Recomputing the correct amounts owed by tenants; and

(3) Taking needed actions to recoup the excess benefits received, such as initiating litigation.

Costs incurred to detect potential excessive benefits in the routine day-to-day operations of the program are excluded in determining the principal party in initiating or sustaining an action to recover. For example, the cost of income verification during an annual recertification would not be counted in determining the principal party in initiating or sustaining an action to recover.

Repayment agreement. Repayment agreement means a formal document signed by a tenant or owner and provided to an HA in which a tenant or

Office of the Secretary, HUD

§ 792.204

owner acknowledges a debt, in a specific amount, and agrees to repay the amount due at specific time period(s).

[59 FR 9409, Feb. 28, 1994, as amended at 61 FR 5212, Feb. 9, 1996]

Subpart B—Recovery of Section 8 Funds

§ 792.201 Conduct of litigation.

The HA must obtain HUD approval before initiating litigation in which the HA is requesting HUD assistance or participation.

§ 792.202 HA retention of proceeds.

(a) Where the HA is the principal party initiating or sustaining an action to recover amounts from tenants that are due as a result of fraud and abuse, the HA may retain, the greater of:

(1) Fifty percent of the amount it actually collects from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 882.216 or § 887.405; or

(2) Reasonable and necessary costs that the HA incurs related to the collection from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 882.216 or § 887.405. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees.

(b) If HUD incurs costs on behalf of the HA in obtaining the judgment, these costs must be deducted from the amount to be retained by the HA.

§ 792.203 Application of amounts recovered.

(a) The HA may only use the amount of the recovery it is authorized to retain in support of the section 8 program in which the fraud occurred.

(b) The remaining balance of the recovery proceeds (i.e., the portion of recovery the HA is not authorized to retain) must be applied as directed by HUD.

§ 792.204 Recordkeeping and reporting.

To permit HUD to audit amounts retained under this part, an HA must maintain all records required by HUD, including:

(a) Amounts recovered on any judgment or repayment agreement;

(b) The nature of the judgment or repayment agreement; and

(c) The amount of the legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

(Approved by the Office of Management and Budget under Control Number 2577-0053)

PARTS 793–798 [RESERVED]